

S.B. CIVIL WRIT PETITION NO.4712/2007

Smt. Omwati.

VS.

Raja Ram and ors.

Date : 3.12.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.KR Saharan for Mr.Sajjan Singh, for petitioner.

Mr.H Choudhary, for the respondents.

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Heard learned counsel for the parties.

The petitioner/defendant is aggrieved against the order dated 2.6.2007 by which the appellate court allowed the appeal of the respondents/plaintiffs preferred on the refusal of the injunction on their application filed under Order 39 Rules 1 & 2 CPC by the trial court vide order dated 24.3.2007.

Brief facts of the case are that three plaintiffs filed suit for specific performance of contract dated 10.5.1979, in the year 2006 alleging that Sher Singh agreed to sell land belonging to him for his legal necessity and for

that purpose, he gave power of attorney to his brothers Kartar Singh and Dalbar Singh who executed agreement to sell in plaintiffs' favour. Sale deed has not been executed in pursuance of said agreement by the time when present suit was filed in the year 2005. Total land measuring was 9 bighas 18 biswas and total consideration agreed was Rs.12,000/-. According to the plaintiffs, the entire consideration was paid to said Sher Singh and possession was taken by the plaintiffs/vendors. Sher Singh died in the year 1979 itself but it has not been mentioned that in which month, he died. Be it as it may be, according to the plaintiffs, on 9.6.1979, Sher Singh's brother Dalbar Singh extended the time for execution of the sale deed. The plaintiffs when came to know that the suit property has already been sold to the defendant on 20.4.2005, then they filed this suit for specific performance of contract. In the suit, the plaintiffs submitted application for grant of temporary injunction.

The trial court vide order dated 24.3.2007 observed that the plaintiffs' own case in the plaint itself was that the power of attorney was given by Sher Singh to Kartar Singh and Dalbar Singh whereas alleged power of attorney is in favour of only Kartar Singh and giving of power of

attorney even to Kartar Singh is doubtful in the light of the language used in the agreement which purports to say that the power of attorney will be given to Kartar Singh subsequent to the date of agreement but copy of power of attorney produced in the Court discloses that the power of attorney was already given to Kartar Singh. The trial court also took note of the fact that endorsement of extension of time by Dalbar Singh was wholly unauthorised because there was no power of attorney in favour of Dalbar Singh so that he could have extended the time. The trial court also observed that Dalbar Singh had no authority to execute the agreement to sell or to extend the time. The trial court also observed that for an alleged agreement for sale of the year 1979, the suit for specific performance of contract has been filed in the year 2006. The trial court also did not find the possession of the plaintiffs on the land in question and, therefore, dismissed the injunction application vide order dated 24.3.2007.

The first appellate court even after holding that Dalbar Singh had no authority to act on behalf of Sher Singh at any point of time nor he could have extended the time for execution of the sale deed by making endorsement on the agreement to sale, still relied upon the agreement and found

prima-facie case in favour of the plaintiffs and granted injunction in favour of the plaintiffs by allowing the appeal vide order dated 2.6.2007 and restrained the defendant/petitioner from interfering in the possession of the plaintiffs on the land in question.

Hence, this writ petition.

According to learned counsel for the petitioner, the order of the appellate court is absolutely perverse and capricious and is result of misinterpretation of the relevant documents as well as facts which are not in dispute. According to learned counsel for the petitioner, the agreement is forged and fabricated document and further Dalbar Singh admittedly had no authority to extend the period mentioned in the agreement. As per the agreement dated 10.5.1979, the sale deed was required to be executed within one month from the date of agreement. This important material fact was ignored by the appellate court totally despite holding that Dalbar Singh could not have extended the time. However, according to learned counsel for the petitioner, the endorsement on the agreement is fabrication in the document – agreement to sale as in the revenue suit, when the copy of the agreement was produced,

there was no endorsement dated 9.6.1979 on the agreement which has come in the present agreement to sale. It is also submitted that the petitioner is owner of the property by virtue of the registered sale deed. The appellate court did not consider any of the reason given by the trial court and not only this, but the finding recorded by the appellate court itself clearly shows that the appellate court failed to give effect to its own finding that Dalbar Singh had no authority to extend the time, then how the suit could have been maintainable in the year 2006 for enforcement of the agreement dated 10.5.1979 wherein the period for execution of sale deed was only one month. Apart from it, several facts have been suppressed by the plaintiffs in the suit itself.

Learned counsel for the respondents/ plaintiffs frankly admitted that the trial court as well as the appellate court both held that Dalbar Singh had no authority on behalf of Sher Singh, even then, he is brother of Sher Singh and he extended time and this endorsement is there. Learned counsel for the respondents also submitted that the possession of land since 1979 is with the plaintiffs as held by the appellate court, therefore, if the appellate court granted

injunction on the basis of old possession of the plaintiffs on the land in question, then the appellate court has not committed any error of fact or law. It is also submitted that the plaintiffs have already paid the entire consideration for the property in dispute. In view of the above, this Court may not interfere in the order passed by the appellate court.

I considered the submissions of learned counsel for the parties and perused the relevant documents as well as pleadings.

In the plaint itself, the plaintiffs clearly mentioned that Sher Singh gave power of attorney in favour of Kartar Singh and Dalbar Singh. Agreement was executed by Kartar Singh and Dalbar Singh. Copy of power of attorney produced by the plaintiffs themselves discloses that Dalbar Singh was not power of attorney of Sher Singh, then how Dalbar Singh executed the agreement to sale in favour of the plaintiffs, has not been explained by the plaintiffs in any manner either in the pleadings or otherwise. Not only this, the extension of time as per the endorsement dated 9.6.1979 is by Dalbar Singh and both the courts below held that Dalbar Singh was not power of

attorney, then admittedly, he could not have extended the time for execution of the sale deed as provided under the agreement dated 10.5.1979. further, what was the reason for introduction of Dalbar Singh ? and what was the reason for not obtaining the signatures of Kartar Singh on the endorsement made on 9.6.1979 on the agreement dated 10.5.1979 ? is not explained. In view of the above reason, the appellate court ignored its own finding and failed to appreciate the effect of its own finding about the authority of Dalbar Singh in signing the agreement dated 10.5.1979 as well as for making endorsement of extension of time on 9.6.1979. The appellate court also failed to give any reason that when on earlier occasion, the document was produced in the revenue court, there was no endorsement of extension of time. In view of the above reasons, the finding of the appellate court is self contradictory, contradicting its own reasons and in fact supporting the reasons given by the trial court. Therefore, the order on the face of it is absolutely perverse and capricious.

So far as the question of possession is concerned, the trial court relied upon oral evidence produced by the plaintiffs ignoring the relevant material facts that one of the document

showing the possession of the plaintiffs was the agreement to sale which is disputed and doubtful. In view of the above fact and in view of the additional fact that the petitioner has registered sale deed in her favour, the appellate court could not have interfered in the reasoned order passed by the trial court.

In view of the above discussion, this writ petition is allowed, the order of the first appellate court dated 2.6.2007 is set aside and the order of the trial court dated 24.3.2007 is upheld.

(PRAKASH TATIA), J.

S.Phophaliya